HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 514 of 2005 (SS)

1. Kunwar Singh
2. Devendra Prasad Dimri
3. Manish Kukreti
4. Sunil Dobariyal
5. Mahesh Chandra Verma
6. Shakti Prasad
7. Sudhir Singh Rawat

..... Petitioners

Versus

1. State of Uttaranchal
2. Secretary, Rural Development & Panchayat Raj Vibhag, Uttaranchal
3. District Magistrate, Dehradun
4. Chief Development Officer, Dehradun
5. Sri Dalip Chandra Arya, District
6. Development Officer, Dehradun ... Respondents

Mr. Manoj Tiwari, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 11.5.2005

Hon'ble Mr. Justice Rajesh Tandon J.

By the present writ petition the petitioners have prayed for a writ of certiorari quashing the order dated 29.4.2005/ 2.5.2005 passed by the respondent no.3.

Briefly stated the petitioners are serving as Gram Panchayat Vikas Adhikari in various Gram Panchayat Blocks of District Dehradun. Petitioners No. 1,2,3 and 6 were appointed as Gram Vikas Adhikari in the Department of Rural Development before reorganization of the State. The petitioners

No. 4, 5 and 7 were appointed as Gram Panchayat Adhikari in Panchayat Raj Vibhag before reorganization of the State. The petitioners submit that Gram Vikas Adhikari Association, Uttaranchal is a recognized Association of the persons serving as Gram Vikas Adhikari in Rural Development Department. The petitioner no.1 is at present holding office of the State President of the said Association and was elected in December 2003. Petitioners no.2 and 3 are holding the office of President and Secretary of Dehradun District Unit of the said Association and were elected to the said office in August 2004. Petitioner No. 6 is holding the office of General Secretary in the State Unit of aforesaid Unit and he was elected to the said office in December 2003. Petitioner no. 7 is presently holding the office of State President of the Gram Panchayat Adhikari Association.

The petitioners alleged that respondent no. 5 Sri Dileep Chandra Arya, District Development Officer, Dehradun has committed a number of irregularities and three associations of Government employees had jointly submitted one complaint dated 17.1.2005 against him to the Principal Secretary and Commissioner, Rural Development Department, Government of Uttaranchal. Another complaint dated 18.1.2005 was jointly filed by the petitioner no. 1 to 6 against the respondent no. 5. The petitioner no. 7 had also submitted a complaint against respondent no.5 on 19.1.2005. On the complaints of the petitioners the Government has directed inquiry against him. For the obvious reasons, the respondent no. 5 got one order dated 29.4.2005/2.5.2005 issued against the petitioners with the signatures of respondent no. 3 whereby all the petitioners have been transferred on administrative grounds to different blocks. The petitioners have submitted that the petitioners are

the office bearers of recognized Associations and they were transferred with a view of retaliation and victimization.

The learned counsel for the petitioners has submitted that para 15 of Government order dated 19.6.2004 specifically provides that President and Secretary of recognized associations shall not be transferred within two years of their election to the said office. All the petitioners are yet to complete the prescribed period of two years after their election and as such the impugned order of transfer is against the standing orders of the State Government.

So far as the transfer order is concerned no interference can be made under Article 226 of the Constitution of India. An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered if the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order.

It has been held by the Apex Court in the case Shilpi Bose and others vs. State of Bihar and others AIR 1991 SC 532 as under:

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from the one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the

Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the Department. If the courts continue to interfere with day to day transfer orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration, which would not be conducive to public interest. The High Court over looked these aspects in interfering with the transfer orders."

Further the apex Court in State of U.P. v. Goberdhan Lal (2004) 11 SCC 402 has observed as under:

"A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

It is well settled that the transfer is an exigency of service. However option for the petitioners to approach the higher authorities is available and the petitioners are at liberty to approach the higher authority.

Liberty is, therefore, given to the petitioners to make representation to the appropriate higher authority within 15

days after receipt of the certified copy of this order, who shall decide the same within a month thereafter. The order of transfer shall remain in abeyance for a period of one and a half month.

With the observations, made above the writ petitions is disposed of. No order as to costs.

Rajesh Tandon J.

11.5.2005
Dhyani